



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1996

Ms. Kari A. Hernandez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR96-1794

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101164.

The City of El Paso Fire Department (the "department") received a request for "[a]ny information by the city attorney's office, the mayor's office, or any other city official or any department of the City of El Paso regarding the possible elimination of the Fire Marshall Division of the El Paso Fire Department."¹ You claim that the documents responsive to the request, three pages of the personal notes of Chief Johns, may not constitute "public information" as defined by the Open Records Act and, alternatively, claim that this information is excepted from required public disclosure pursuant to section 552.111 of the Government Code.

You claim that the notes belong to Chief Johns are personal, were not intended for the use of anyone other than Chief Johns, and are not part of the City of El Paso's files nor collected or maintained by the city. Section 552.002(a) of the Open Records Act provides:

¹The requestor also seeks "[a]ny written information by the city attorney's office or the mayor's office regarding changes to the city's hazardous materials ordinance/municipal fire code." However, the documents responsive to this request, and the Open Records Act's exceptions to disclosure raised, were identical to the documents responsive to another request, and the Open Records Act's exceptions to disclosure raised as to that request, which this office addressed in Open Records Letter No. 96-1169 (1996). You inform us that you have already provided this requestor with the records responsive to this request in conformity with Open Records Letter No. 96-1169 (1996) and, therefore, we do not address those records in this ruling.

In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or *in connection with the transaction of official business*:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a) (emphasis added). Clearly, Chief John's notes were created "in connection with the transaction of official business." Accordingly, we conclude that the notes are public records subject to the act under section 552.002(a). *See* Open Records Decision No. 626 (1994).

You also assert that these notes may be withheld from public disclosure under section 552.111, which excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* We conclude that the notes reflect the policymaking processes of the department and, consequently, may be withheld under section 552.111 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 101164

Enclosures: Submitted documents

cc: Mr. Richard Boren
International Environmental Alliance of the Bravo
P.O. Box 3367
El Paso, Texas 79923
(w/o enclosures)